IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6231 of 2007
With
SPECIAL CIVIL APPLICATION No. 6771 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA ***Sd/-***

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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KESHUBHAI MADIYABHAI KATARA - Petitioner(s)
Versus
COMMISSIONER OF POLICE OF THE CITY OF AHMEDABAD & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
MS MD MEHTA ASSTT GOVERNMENT PLEADER for Respondents:1-3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 29/08/2007

C.A.V. JUDGMENT :

1. In both these petitions, invoking Article 226 of the Constitution and seeking writs of

habeas corpus or any other appropriate direction setting aside the orders dated 30.12.2006 of detention, not only the impugned orders issued under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "PASA") but the grounds of detention, all other relevant facts and grounds of petition are all stated to be identical and hence, they are heard together and disposed by this common judgment.

2. According to the grounds of detention supplied to the detenu under section 9 of PASA, they are "*dangerous persons*" having cruel nature and criminal mind. They are stated to be indulging in the activity of committing theft in Odhav area of Ahmedabad by breaking open locks and grills of closed premises during night and thereby instilling a sense of fear in the public. Five FIRs are stated to have been registered in Odhav Police Station alleging offences punishable under sections 454, 457 and 388 or sections 457 and 387 of the Indian Penal Code, 1860, pursuant to each one of which the petitioners are stated to have been arrested in October 2006 and released on bail in November or December, 2006. The numbers and dates of the cases registered against the petitioners are: (1) C.R.No.311/06

dated 25.7.2006, (2) C.R.No.329/06 dated 7.8.2006, (3) C.R.No.335/06 dated 11.8.2006, (4) C.R.No.391/06 dated 28.9.2006 and (5) C.R.No.401/06 dated 29.9.2006. As stated in the grounds of detention, implements for breaking locks were recovered from the petitioners and stolen goods and the goods alleged to have been stolen in C.R.Nos.335/06, 329/06 and 401/06 are also stated to have been recovered from the goldsmith to whom they were sold. The detenues are stated to be "*dangerous persons*" as defined in section 2 (c) of PASA and two witnesses, whose names were not disclosed in public interest, are stated to have related incidents in which the petitioners were alleged to have threatened and assaulted them with knife on 1st and 2nd October 2006, and a scene was alleged to have been created in public place due to which the people gathered at the spot had to run away out of fear. Statements of witnesses are stated to have been verified by the Detaining Authority and their identity is stated to have not been disclosed in public interest after being satisfied about the genuineness of their apprehensions. Thus, after being satisfied about the petitioners' status of being "*dangerous persons*" and in view of the fact that the petitioners, who were released on bail in connection with all the cases registered against them, were likely to persist in their

anti-social activities, it was found to be necessary to prevent them from acting in a manner prejudicial to maintenance of public order and, as a last resort, impugned orders are stated to have been made.

3. Learned counsel Ms.Banna Dutta, appearing for the petitioners, challenged the impugned orders on three grounds, namely, that the alleged activities of the petitioners did not adversely affect public order, that though bail applications and orders made thereon in connection with C.R.No.311/06 were referred and relied upon in the impugned orders, copies thereof were not supplied to the detenu which deprived them of the opportunity of making proper representation and even non-consideration of those orders vitiated subjective satisfaction of the Detaining Authority and that the Detaining Authority had not verified the antecedents and character of the witnesses whose names were not disclosed, which caused serious prejudice to the petitioners.

4. By filing an affidavit-in-reply of the Detaining Authority, it is, *inter alia*, stated as under:

"7. ....I say that, as mentioned hereinabove, after carefully scrutinizing, examining and considering the materials placed before me and on personally verifying the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in the unregistered cases by calling the said witnesses to my office and after satisfying myself that the fear expressed and the apprehension made by them is found to be quite real, proper, genuine and reasonable and after applying my mind to the facts of the case, as I was subjectively satisfied that if the names, addresses and other particulars of the witnesses are disclosed to the detenu, their lives and properties will be in danger, the privilege under section 9 (2) of PASA Act is claimed. I say that the witnesses were not ready and willing to come forward to register any complaint against the detenu because of fear and apprehension of insecurity to the lives and properties of the witnesses and their family members. I say that the claim of privilege for not disclosing the identity of the witnesses to the detenu is genuine and reasonable and claimed with bona fide exercise power and there is no violation of the fundamental rights of the detenu guaranteed under Article 22 (5) of the Constitution of India....."

The Detaining Authority has denied the other allegations made in the petitions.

5. Relevant statutory provisions may be extracted for ready reference and for applying them in the facts of present cases.

"*The Gujarat Prevention of Anti-Social Activities Act, 1985*

(Gujarat Act No.16 of 1985)

An Act to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order.

***S.2 Definition**:-In this Act, unless the context otherwise requires,*

(a) ... ...

(b) ... ...

***(c)** "**dangerous person**" means a person who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 or any of the offences punishable under Chapter V of the Arms Act, 1959."*

"***S.3 Power to make orders detaining certain persons:***

***(1)** The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*

(2) ... ...

(3) ... ...

***(4)** For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the*

maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

***Explanation**: For the purpose of this sub-section, 'public order' shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health."*

S.9 Grounds of order of detention to be disclosed to detenu:

***(1)** When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than seven days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.*

***(2)** Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."*

6. Following judgments and particularly the observations, as under, made therein were discussed at the bar.

Re: Public Order

(a) Tapan Kumar Mukherjee v. State of West Bengal [AIR 1972 SC 840]:

"12. ...the acts committed by the petitioner are in the travelling trains which create or likely to create disturbance to public order by causing panic among the travelling passengers. It is contended that these grounds related only to law and order but we cannot accept this contention. The innocent passengers would be terror-stricken by the acts alleged to have been committed by the petitioner and his associates....."

(b) Gulab Mehra v. State of U.P. [AIR 1987 SC 2332]:

"*20. ....An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. Thus whether an act relates to law and order or to public order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order."*

(c) *Mrs.T.Devaki v. Government of Tamil Nadu [AIR 1990 SC 1086]*:

"19. .....A solitary assault on one individual can hardly be said to disturb public

peace or place public order in jeopardy so much as to bring the case within the purview of the Act. Such a solitary incident can only raise a law and order problem and no more. Moreover, there is no material on record to show that the reach and potentiality of the aforesaid incident was so great as to disturb the normal life of the community in the locality or it disturbed general peace and tranquility....."

(d) Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police [1995 (2) GLR 1268]:

"8. ....It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. ....This court observed that the word "habit" implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar, 1984 (3) SCC 14, this Court construed the expression "habitually" to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit...."

(e) Darpan Kumar Sharma v. State of Tamil Nadu [AIR 2003 SC 971]:

"6. ....Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

(f) Commissioner of Police v. C.Anita [(2004) 7 SCC 467]:

"7. .....Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

> *"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"*

This question has to be faced in every case on its facts....

"13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder....

"15. The court cannot substitute its own opinions for that of the detaining authority

when the grounds of detention are precise, pertinent, proximate and relevant....."

(g) State of U.P. v. Sanjai Pratap Gupta alias Pappu [(2004) 8 SCC 591:

"14. .....The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact."

Re: Non-supply of documents

(h) Bhawarlal Ganeshmalji v. State of Tamil Nadu [(1979) 1 SCC 465]:

"8. ....If the detenu wanted any more particulars such as the name of the intelligence officer or other information, he could have well asked for the particulars before making his representation. That he never did. It was not as if any privilege had been claimed by the Government in respect of the intelligence reports. In fact, we find that the intelligence reports were produced before the learned judges of the High Court at the hearing of the writ petition there. There was no complaint before us that the detenu or his counsel wanted to peruse the reports and were denied the opportunity of doing so. We do not think that the detenu could be said to have been denied a reasonable opportunity of making a representation merely because particulars which he never desired in respect of a ground which was not vague were not furnished to him....."

(i) Union of India v. Manoharlal Narang [(1987) 2 SCC 241]:

"11. .....In our view, the absence of consideration of this important document amounts to non-application of mind on the part of the detaining authority rendering the detention order invalid."

(j) Ayya alias Ayub v. State of U.P. [AIR 1989 SC 364]:

"13. .....There would be vitiation of the detention on grounds of non-application of mind if a piece of evidence, which was relevant though not binding, had not been considered at all. If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, vitiates the detention. The detaining-authority might very well have come to the same conclusion after considering this material, but in the facts of the case the omission to consider the material assumes materiality."

(k) M. Ahamedkutty v. Union of India [(1990) 2 SCC 1]:

"19. The next submission is that of non-supply of the bail application and the bail order. This court, as was observed in Mangalbhai Motiram Patel v. State of Maharashtra, has 'forged' certain procedural safeguards for citizens under preventive detention. The constitutional imperatives in Article 22 (5) are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are

referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents, it would amount to denial of the right to make an effective representation."

"20. It is immaterial whether the detenu already knew about their contents or not. .....The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22 (5)."

"21. It is also imperative that if the detenu was already in jail, the grounds of detention are to show the awareness of that fact on the part of the detaining authority, otherwise there would be non-application of mind and detention order vitiated thereby....."

"27. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered, the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them, the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22 (5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

(l) Abdul Sathar Ibrahim Manik v. Union of India [AIR 1991 SC 2261]:

"7. .....The next and main submission is that there was suppression of vital documents namely bail application and the order refusing bail, which are relevant documents, and had those documents been placed before the detaining authority they might have influenced the mind of the detaining authority one way or the other. Alternatively it is also contended that irrespective of the fact whether they were placed before the authority or not the copies thereof ought to have been supplied to the petitioner pari passu the grounds of detention and that failure to supply the same has deprived the petitioner of an opportunity of making an effective representation and therefore the detention as such is illegal and violative of Article 22(5) of the Constitution of India.

.....It will therefore be seen that failure to supply each and every document merely referred to and not relied upon will not amount to infringement of the rights guaranteed under Article 22(5) of the Constitution. We may of course add that whether the document is casually or passingly referred to or whether it has also formed the material for arriving at the subjective satisfaction, depends upon the facts and grounds in each case....

"8. .....It is not laid down clearly as a principle that in all cases non consideration of the bail application and the order refusing bail would automatically affect the detention..... We are satisfied that the above observations made by the Division Bench of this Court (in Ahamedkutty's case) do not lay down such legal principle in general and a careful examination of the entire discussion would go to show that these observations were made while rejecting the

contention that the bail application and the order granting bail though referred to in the grounds were not, relied upon and therefore need not be supplied. ..... Further that was a case where the detenu was released on bail and was not in custody. This was a vital circumstance which the authority had to consider and rely before passing the detention order and therefore they had to be supplied.

"13. .....These materials show that the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to indulge himself in the smuggling activities. It, therefore, cannot be said that there were no compelling reasons justifying the detention despite the fact that the detenu is already in custody. Likewise the failure to supply the bail application and the order refusing bail does not in any manner prejudice the detenu from making a representation particularly when he was fully aware of the contents of application made by himself and also the refusal order. However, when they are not referred to or relied upon the non supply does not affect the detention."

(m) Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar [2000 (2) GLH 540]:

After reference to the above judgments in Ahamedkutty (supra) and Abdul Sathar Ibrahim (supra), this court has culled out the following proposition:

"*Thus the correct legal position, which emerges from the aforesaid decisions, is as under:*

(i) Failure to furnish the copies of the documents to which only a reference or

a casual or passing reference was made in the grounds of detention is not an infringement of Article 22 (5), fatal to the order of detention;

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non-supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenu need not to show that any prejudice is caused to him. Non-supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order;

(iii) When the detenu was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail as that would be a vital ground for ordering the detention and in such cases the copies should also be supplied to the detenu;

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

(n) K.S.Nagamuthu v. State of Tamil Nadu [(2006) 4 SCC 792]:

"10. .....It is not disputed that the letter addressed to the Superintendent of Customs

(AIR), Customs House, Chennai was, in fact, delivered on 7.1.2004 as is apparent from the seal on the receipt and as admitted in the counter-affidavit by the State of Tamil Nadu. There is no reason why it should not have been placed before the detaining authority for his consideration. It has not been disputed that the said letter of retraction contained relevant material, which ought to have been considered by the detaining authority before passing an order of detention. Since relevant material was withheld from the detaining authority, the order of detention must be struck down as being illegal....."

Re: Non-disclosure of material

(o) Bai Amina w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat [1981 GLR 1186]:

"16. The mere fact that the relevant particulars and materials are furnished to the detaining authority in confidence by some person is not by itself a sufficient ground for withholding the disclosure of such particulars and materials, if those materials and particulars have been relied upon against the detenu and the disclosure of such materials and particulars would assist the detenu in making an effective representation against his detention. The private promise of confidentiality must yield to the general public interest that is served by communication of such particulars and materials to the detenu in order to enable him to make an effective representation against his detention.....

"17. While this question is under consideration, it would be worthwhile to point out that the detaining authority must itself be satisfied that it is against the public interest to make such disclosure. ....The mind of detaining authority itself should, therefore, be applied to the question whether or not the

supply of the relevant particulars and materials would be injuries to the public interest. If it mechanically endorses or accepts the recommendation of an outsider or inferior authority in that behalf, the exercise of power would be vitiated as arbitrary.

"18. We consider it appropriate to observe also that an omnibus satisfaction, without close application of mind to each matter separately, with regard to the advisability of withholding, on the ground of public interest, the whole of any statement or document/the entire materials and particulars/the identity of sources from which they were gathered, is not sanctioned by the law. The satisfaction must be qua such statement or document and qua each particular and material and qua the identity of each informant. It must be arrived at upon the application of mind from the various angles relevant to each of them. The detaining authority must separately consider whether the statement or document or particulars and materials can be disclosed without disclosing the identity of the source and whether any part of such statement or document or particulars and materials can be disclosed without giving a distorted or misleading picture.

"19. .....One more aspect before we turn to examine the validity of the claim of privilege in the instant case. If the exercise of privilege is challenged in a court of law as vitiated by factual or legal mala fides, the bald assertion of the detaining authority that it was not in the public interest to disclose the relevant documents, materials and particulars would not conclude the issue. A mere ipse dixit of the detaining authority to that effect will not preclude the examination of the challenge. A general, unspecific and bald averment of public interest is not what the Constitution or the law requires. The court will have to be satisfied in such a case by an affidavit affirmed by the detaining authority itself that the decision to withhold from the

detenu the material documents, statements, materials and particulars was bona fide and rationally reached by the detaining authority after proper application of mind to each matter and after considering all the relevant aspects. .....Once the affidavit of the detaining authority discloses the grounds and reasons which weighed with it in withholding the documents, statements, materials and particulars, it wold be the duty of the court to examine whether the grounds and reasons have any rational connection with the public interest or whether the detaining authority could have been reasonably satisfied on that basis that the disclosure was not in the public interest.....

"20. .....The question merits consideration whether, on the facts and circumstances of the case, the second respondent could have been rationally and honestly satisfied that the apprehension of both the persons concerned was genuine and real."

(p) Kajalben G. Sindhi v. Commissioner of Police, Ahmedabad [2000 (1) GLH 320]:

"11. In the instant case, not only there is nothing in the contemporaneous record with regard to formation of such opinion or satisfaction regarding withholding of names and material particulars by the detaining authority, but nothing is stated in the grounds of detention. On the contrary, in the affidavit-in-reply, in para 10, the detaining authority has stated that he was subjectively satisfied that if names and addresses were disclosed to the detenu, their lives and properties would be in danger. It was further stated that witnesses were not coming forward to register any complaint because of fear and apprehension of insecurity to their lives and properties. Looking to the record, it appears that it was not stated by the witnesses themselves that there would be damage to their properties. It is

also not stated by the detaining authority in the order or even in the grounds of detention and that ground was probably stated for the first time in the affidavit-in-reply."

7. The vexed issue as to whether consistent record of the cases of theft registered against the petitioners would adversely affect public order has to be examined with reference to the extended meaning of "*acting in any manner prejudicial to maintenance of public order*" and the mandatory deeming fiction contained in the Explanation to sub-section (4) of section 3 of the Act. If the activities of a "*dangerous person*" are likely to cause any harm, danger or alarm or feeling of insecurity among general public or any section thereof, it has to be deemed to be likely to adversely affect public order. In the facts of the present case, the consistent record of repeated offences of similar nature committed in the same area within the span of two months can reasonably cause alarm or feeling of insecurity among a section of general public living in that or surrounding area. Therefore, it has to be necessarily deemed that public order was likely to be adversely affected due to the alleged activities of the petitioners. It is not the persons who are directly and already affected by the alleged activities of the

petitioners which is material, but it is the effect of the alleged activities on the even tempo of life and its impact upon the society which is the important and relevant consideration for preventive detention which aims at preventing a general sense of insecurity. As held by the Supreme Court in ***Naresh Kumar Goyal v. Union of India [(2005) 8 SCC 276]***, preventive detention is devised to afford protection to society, its object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so. Therefore, in the facts of the present case and in view of the scheme and purpose of the Act, it has to be held that the alleged activities of the petitioners, about which there was credible material, were, rightly and with proper application of mind, deemed to be likely to adversely affect public order. And the court cannot substitute its own opinion for that of the detaining authority in the matter of necessity of making an order of preventive detention with respect to any person when the grounds of detention are precise, pertinent, proximate and relevant.

8. As for the second submission based on non-supply of bail application and orders made thereon in connection with C.R.No.311/06, though referred in the impugned order, it was seen that

that was the first case mentioned in the grounds. The documents were neither material nor the basis of the impugned order since, in all, five cases were mentioned in the grounds in each of which the petitioners were released on bail. As held by

Full Bench of this court in ***Koli Bharatbhai Ukabhai Vegad v. District Magistrate [2001 (2) GLH 335]***, only relevant and vital material is required to be taken into consideration for subjective satisfaction of the detaining authority and the anxiety of the court should be to ascertain as to whether the decision making process for reaching the subjective satisfaction on objective facts was in any way influenced, coloured or affected by any caprice, malice or irrelevant considerations or non-application of mind. In the facts of the present case, relevance of the application for or order of bail were only to the extent of being the basis of the statement of fact that the petitioners were at large on bail and hence likely to persist in their alleged anti-social activities. Therefore, it was by way of mere passing reference that the order releasing the petitioners on bail in one out of five cases that it was taken note of and it was neither material nor important in the sense that it could have influenced the subjective satisfaction of the detaining authority. As held

by this Court in ***Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar (supra),*** failure to furnish copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Article 22 (5), fatal to the order of detention.

9. The third and the weakest contention canvassed on behalf of the petitioners, based on the judgment of this court in ***Bai Amina*** (supra), was that the detaining authority had, in arriving at the subjective satisfaction, relied, *inter alia*, upon statements of two witnesses whose names were not disclosed to the petitioners; and their antecedents and character were not verified by the detaining authority. It was submitted that two incidents alleged to have occurred on 1.10.2006 and 2.10.2006 were expressly relied upon by the detaining authority and they were only related by those witnesses whose names were not disclosed in public interest. However, when the power not to disclose the important material was exercised, it was incumbent upon the authority to verify the antecedents and character of such witnesses, according to the submission. That submission was sought to be supported by the observations, as under, in ***Bai Amina*** (supra):

> *"16....If the disclosure of the particulars and materials and the sources from which they are obtained is not to be made on the ground of promise of confidentiality made to the informant in view of his apprehension that he would be visited with dire consequences if the detenu came to know that he was the source from which the particulars and materials were gathered, the detaining authority must be fully satisfied that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. The general background, character, antecedents, criminal tendency or propensity etc. of the detenu and such of those matters as are relevant in the context of the informant must be inquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alia, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu..."*

The submission of learned counsel for the petitioners appears to be based upon misreading of the above observation insofar as it nowhere requires an enquiry into the antecedents and character of the witnesses whose names are not disclosed. Instead, it calls for careful examination of the apprehension of the informant in the context of the general background, character, antecedents, criminal tendency or

propensity etc. of the detenu. If the apprehension of the informant is found to be reasonable and genuine, it is a matter of subjective satisfaction of the detaining authority to consider and decide whether it would be against public interest to disclose any information about the informant. In the facts of the present case, it is stated in the grounds for detention that the detaining authority had particularly called the witnesses for verification of the statements made by them as also to enquire about genuineness of their apprehensions and, it was thereafter that their names were not disclosed in public interest. It is also stated in the affidavit-in-reply of the detaining authority that, after carefully scrutinizing the materials and personally verifying the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in the unregistered cases by calling the said witnesses and after being satisfied about the genuineness and reasonableness of the fear and apprehension expressed by them, the authority was subjectively satisfied that if names and addresses and other particulars of the witnesses were disclosed, their lives and properties would be in danger and, on that basis, the privilege under section 9 (2) of PASA was claimed. Thus, the requirements

envisaged by ***Bai Amina*** (supra) were substantially fulfilled. Therefore, the last of the submissions for the petitioner also fails.

10. In the facts and for the reasons discussed hereinabove, impugned orders directing detention of the petitioners are found and held to be legal and, since no ground is made out to set them aside, petitions are dismissed and Rule therein is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)